

ENROLLED HOUSE  
BILL NO. 1727

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Friskup, Graves, Greenwood,  
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Piatt, Pope (Tim), Roggow,  
Smaligo, Smith (Hopper),  
Steele, Sullivan (Leonard),  
Tibbs, Tyler, Vaughn, Webb,  
Winchester and Young of the  
House

and

Wilkerson of the Senate

An Act relating to public health and safety; amending 63 O.S. 1991, Section 1-1940, as last amended by Section 17, Chapter 340, O.S.L. 2000 (63 O.S. Supp. 2000, Section 1-1940), which relates to the Nursing Home Care Act; modifying powers and duties of the Attorney General; making persons performing abortions liable for certain medical expenses under certain circumstances; amending Section 1, Chapter 340, O.S.L. 2000 and Section 2, Chapter 340, O.S.L. 2000, as amended by Section 31, Chapter 418, O.S.L. 2000 (56 O.S. Supp. 2000, Section 2002), which relates to the Oklahoma 2001 Healthcare Initiative; adding duties to the Oklahoma Healthcare Initiative; modifying calculation for determining certain fee; making certain provisions void under certain circumstances; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 63 O.S. 1991, Section 1-1940, as last amended by Section 17, Chapter 340, O.S.L. 2000 (63 O.S. Supp. 2000, Section 1-1940), is amended to read as follows:

Section 1-1940. A. The operation or maintenance of a facility in violation of the Nursing Home Care Act or rules promulgated by the State Board of Health, pursuant thereto, is hereby declared a public nuisance, inimical to the public welfare.

B. The State Commissioner of Health or the Department of Human Services, in the name of the people of the state, through the Attorney General, or the district attorney of the county in which the facility is located, ~~or the Attorney General~~ may, in addition to

other remedies herein provided, bring action for an injunction to restrain such violation or to enjoin the future operation or maintenance of any such facility.

C. 1. Any person with personal knowledge or substantial specific information who believes that the Nursing Home Care Act, a rule promulgated thereto, or a federal certification rule applying to a facility may have been violated may file a complaint.

2. The complaint may be submitted to the State Department of Health, in writing, by telephone, or personally. An oral complaint shall be reduced to writing by the Department.

3. Any person who willfully or recklessly makes a false complaint or a report without a reasonable basis in fact for such a complaint, under the provisions of the Nursing Home Care Act, shall be liable in a civil suit for any actual damages suffered by a facility for any punitive damages set by the court or jury which may be allowed in the discretion of the court or jury when deemed proper by the court or jury.

4. The substance of the complaint shall be provided to the licensee, owner or administrator no earlier than at the commencement of the on-site inspection of the facility which takes place pursuant to the complaint.

5. Upon receipt of a complaint pursuant to this subsection, the Department shall determine whether the Nursing Home Care Act, a rule promulgated pursuant thereto, or a federal certification rule for facilities has been or is being violated and whether the Department has jurisdiction over the complaint area. If the Department does not have jurisdiction over the complaint area, the complaint shall not be investigated by the Department and notice of the decision not to investigate shall be given to the complainant. The complaint shall be immediately referred to the appropriate agency having jurisdiction over the complaint area. A report summarizing the complaint investigation shall be made in writing. The Department shall give priority to investigations of complaints which allege continuing violations or which threaten the health and safety of residents.

6. In all cases, the Department shall inform the complainant of its findings within ten (10) working days of its determination unless otherwise indicated by the complainant. The complainant may direct the Department to send a copy of such findings to one other person. The notice of such findings shall include a copy of the written determination, the remedial action taken, if any, and the state licensure or federal certification, or both, on which the violation is listed.

D. 1. Upon receipt of a complaint submitted to the State Department of Health by the Department of Human Services or the Attorney General which alleges a violation of the Nursing Home Care Act, any rule promulgated thereto, or federal certification rules, and which also alleges that such violation is a serious threat to the health, safety and welfare of a resident of a nursing facility, the State Department of Health shall take immediate action to remedy the violation based upon the complaint of the Department of Human Services.

2. The Department of Human Services or the Attorney General as applicable shall be deemed a party pursuant to the Administrative Procedures Act for purposes of any complaint made by the Department of Human Services or the Attorney General as applicable to the State Department of Health for violations of the Nursing Home Care Act, rules promulgated thereto or federal certification rules.

- a. Within thirty (30) days of receipt of a final investigative report submitted by the Department of Human Services or the Attorney General as applicable pursuant to this section, the State Department of Health shall provide the Department of Human Services with a written summary of any action taken pertaining to the complaint including, but not limited to, any inspection or actions which may be taken by the State Department of Health.
- b. Whenever the Department of Human Services or the Attorney General as applicable believes that the conditions giving rise to a complaint alleging a serious threat to the health, safety and welfare of a resident of a nursing facility have not been adequately addressed, the Department of Human Services may request a hearing on the complaint as provided by Section 309 of Title 75 of the Oklahoma Statutes.

E. A written determination, notice of violation and remedial action taken concerning a complaint shall be available for public inspection at the facility.

F. The Department shall seek any remedial action provided under ~~this act~~ the Nursing Home Care Act for violations documented during complaint investigations.

G. The State Board of Health shall promulgate rules governing the receipt, investigation and resolution of complaints and reports of violations. The rules promulgated by the Board shall provide for the expeditious investigation and resolution of a complaint or report including, but not limited to:

1. An easily understood and readily accessible method of submitting complaints and reports regarding complaints;

2. Actions to be taken upon the receipt of a complaint or report of a complaint;

3. Establishing a priority for investigations of complaints. Specifically, the Department shall give higher priority to investigations of complaints which allege continuing violations or which threaten the health, safety or welfare of residents;

4. The timely investigation of the complaint or report of a complaint;

5. Written reports to the complainants or persons filing the complaint report;

6. Any necessary or appropriate remedial action as determined by the findings of the investigation;

7. The protection of the identity of the complainant, provided that the person is a current or past resident or resident's representative or designated guardian or a current or past employee of a facility;

8. Specific information to be included in investigative protocols which must include at a minimum an interview with:

- a. the complainant,
- b. the resident, if possible, and
- c. any potential witness, collateral resource or affected resident; and

9. Any additional rules necessary for the timely and thorough investigation and resolution of complaints.

H. The Department is authorized to employ hearing officers, and hire attorneys to represent the Department and Commissioner to ensure that this and other laws pertaining to the Department are properly executed.

SECTION 2. NEW LAW. A new section of law to be codified in the Oklahoma Statutes as Section 1-738 of Title 63, unless there is created a duplication in numbering, reads as follows:

Any person who performs an abortion on a minor without parental consent or knowledge shall be liable for the cost of any subsequent medical treatment such minor might require because of the abortion.

SECTION 3. AMENDATORY Section 1, Chapter 340, O.S.L. 2000, is amended to read as follows:

Section 1. A. This act shall be known and may be cited as the "Oklahoma 2001 Healthcare Initiative".

B. 1. The purpose of the Oklahoma 2001 Healthcare Initiative is to improve the public health care system of Oklahoma through increased health care services and benefits.

2. In order to upgrade Oklahoma's health care system, the Oklahoma Legislature through the Oklahoma 2001 Healthcare Initiative hereby provides funding for the most critical needs of the vulnerable citizens and residents of this state.

C. To this end, the Oklahoma Legislature hereby requires:

1. The Oklahoma Health Care Authority to:

- a. increase by eighteen percent (18%), provided the increase does not exceed federal limits, the Medicaid reimbursement rate to the following persons or entities providing Medicaid-authorized services to eligible persons:

- (1) physicians including, but not limited to, psychiatrists and osteopathic physicians,

- (2) home health care providers,
  - (3) laboratory and clinic services providers,
  - (4) ambulatory clinic providers, and
  - (5) other Medicaid-authorized medical services providers including, but not limited to: chiropractors, optometrists, opticians, psychologists, speech pathologists, and occupational therapists,
- b. increase by ten percent (10%) the Medicaid reimbursement rate to persons providing Medicaid behavioral health counseling services to eligible persons,
  - c. increase the hospital inpatient day limit for Medicaid services from twelve (12) days to twenty-four (24) days per year,
  - d. increase the Medicaid reimbursement rate to the Sooner Care Plus Program for:
    - (1) maternity level of care services
      - increase by \$271.00 per delivery
    - (2) emergency room services
      - increase emergency room visit rate
      - increase nonemergency room visit rate
    - (3) ambulatory surgical services                      10% increase
    - (4) inpatient hospital services                      12% increase
    - (5) neonatal inpatient hospital services                      20% increase
  - e. increase the Medicaid reimbursement rate to hospitals in the Fee-For-Service Program for:
    - (1) maternity level of care services,
      - Mother                      increase by \$55.50 per day
      - Child                      increase by \$55.50 per day
    - (2) emergency room services
      - increase emergency room visit rate
      - increase nonemergency room visit rate
    - (3) ambulatory surgical services                      10% increase
    - (4) inpatient hospital services                      12% increase

- (5) neonatal inpatient hospital services 20% increase
- (6) critical access hospital services 38% increase
- f. increase the Medicaid reimbursement rate sixty percent (60%) for dental services provided to eligible persons, ~~and~~
- g. increase the Medicaid reimbursement rate forty percent (40%) for ambulance services provided to eligible persons, and
- h. reimburse licensed nursing facilities that are not Medicaid certified for purposes specified by Sections 1-1925.2, 5022.1 and 5022.2 of Title 63 of the Oklahoma Statutes;

2. The State Department of Health, with the cooperation of the Oklahoma Health Care Authority and the Department of Human Services to:

- a. develop and implement a comprehensive, evidence-based tobacco prevention and cessation program from state-appropriated funds, available Medicaid funds, available grant funds, and available Temporary Assistance for Needy Families block grant monies. The program shall:
  - (1) consist of the following four cornerstones:
    - (a) community-based initiatives,
    - (b) voluntary classroom programs in public schools,
    - (c) cessation assistance, and
    - (d) public education media programs, and
  - (2) utilize strategies including, but not limited to, involving school nurses in youth tobacco prevention efforts, and utilizing other efforts that have been demonstrated to be effective by the United States Centers for Disease Control and Prevention in an effort to:
    - (a) lower smoking rates among Oklahoma youths,
    - (b) reduce tobacco consumption by Oklahomans, and
    - (c) reduce exposure related to secondhand tobacco smoke.

The program shall comply with the provisions of Section 19 ~~of this act~~, Chapter 340, O.S.L. 2000,

- b. expend monies made available from the Legislature and other sources for such programs authorized by this section with a goal of encouraging additional matching direct and indirect funds for tobacco prevention and cessation efforts in Oklahoma, and
  - c. report by January 1st of each year to the Legislature on the implementation of the comprehensive, evidence-based tobacco prevention and cessation program specified by this section;
3. The Department of Human Services to:
- a. increase Medicaid reimbursement rates to:
    - (1) direct care staff who provide personal care and ADvantage waiver services to Medicaid-eligible adults including, but not limited to, the reimbursement rate for respite care, meal preparation and housekeeping, and
    - (2) habilitation training specialists who serve developmentally disabled persons including, but not limited to, the reimbursement rate for assisting and training in self-care, and daily living and prevocational skills,
  - b. increase contract amount by thirteen percent (13%) for salaries of Older Americans Act nutrition site employees who provide meals and nutrition services including, but not limited to, reimbursement rates for home-delivered meals, congregate meals and nutrition education,
  - c. purchase services up to Ten Thousand Dollars (\$10,000.00) per child for developmentally disabled children who are on the waiting list to receive services including, but not limited to, habilitation treatment specialist services, medical supplies, home health care, therapy and respite care services,
  - d. purchase services up to Fifteen Thousand Dollars (\$15,000.00) per adult for developmentally disabled adults who are on the waiting list to receive services including, but not limited to, habilitation treatment specialist services, medical supplies, home health care, therapy and respite care services, and
  - e. purchase ADvantage waiver services for developmentally disabled persons without cognitive impairment.

D. If any provision of this section, or the application thereof, is determined by any controlling federal agency, or any court of last resort to prevent the state from obtaining federal financial participation in the state's Medicaid program, such provision shall be deemed null and void as of the date of the nonavailability of such federal funding and through and during any period of nonavailability. All other provisions of the bill shall remain valid and enforceable.

SECTION 4. AMENDATORY Section 2, Chapter 340, O.S.L. 2000, as amended by Section 31, Chapter 418, O.S.L. 2000 (56 O.S. Supp. 2000, Section 2002), is amended to read as follows:

Section 2002. A. For the purpose of providing quality care enhancements, the Oklahoma Health Care Authority is authorized to and shall assess a Nursing Facilities Quality of Care Fee pursuant to this section upon each nursing facility licensed in this state. Quality of care enhancements include, but are not limited to, the purposes specified in this section.

B. As a basis for determining the maximum Nursing Facilities Quality of Care Fee assessed upon each licensed nursing facility, the Oklahoma Health Care Authority shall calculate a uniform per-patient day rate. The rate shall be set at six percent (6%) of the total annual patient gross revenue of all licensed nursing facilities in this state or six percent (6%) of the total annual patient gross revenues of the individual licensed nursing facility, whichever is less.

C. The Nursing Facilities Quality of Care Fee owed by a licensed nursing facility shall be calculated by the Oklahoma Health Care Authority by adding the daily patient census of a licensed nursing facility, as reported by the facility for each day of the month, and by multiplying the ensuing figure by a uniform per-patient day rate determined pursuant to the provisions of subsection B of this section.

D. Each licensed nursing facility which is assessed the Nursing Facilities Quality of Care Fee shall be required to file a report on a monthly basis with the Oklahoma Health Care Authority detailing the daily patient census and patient gross revenues at such time and in such manner as required by the Oklahoma Health Care Authority.

E. 1. The Nursing Facilities Quality of Care Fee for a licensed nursing facility for the period beginning October 1, 2000, shall be determined using the daily patient census and annual patient gross revenues figures reported to the Oklahoma Health Care Authority for the calendar year 1999 upon forms supplied by the Authority.

2. The Nursing Facilities Quality of Care Fee for the fiscal year beginning July 1, 2001, and each fiscal year thereafter shall be determined by:

- a. using the daily patient census and patient gross revenues reports received by the Authority covering the six-month period October 1 through March 31 of the prior fiscal year, and
- b. annualizing those figures.

F. The payment of the Nursing Facilities Quality of Care Fee by licensed nursing facilities shall be an allowable cost for Medicaid reimbursement purposes.

G. 1. There is hereby created in the State Treasury a revolving fund to be designated the "Nursing Facility Quality of Care Fund".

2. The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of:

- a. all monies received by the Authority pursuant to this section and otherwise specified or authorized by law,
- b. monies received by the Authority due to federal financial participation pursuant to Title XIX of the Social Security Act, and
- c. interest attributable to investment of money in the fund.

3. All monies accruing to the credit of the fund are hereby appropriated and shall be budgeted and expended by the Authority for:

- a. reimbursement of the additional costs paid to ~~Medicaid-certified~~ licensed nursing facilities for purposes specified by Sections 4 1-1925.2, 5 5022.1 and 6 5022.2 of ~~this act~~ Title 63 of the Oklahoma Statutes,
- b. reimbursement of the Medicaid rate increases for intermediate care facilities for the mentally retarded (ICFs/MR),
- c. nonemergency transportation services for nursing home clients,
- d. eyeglass and denture services for nursing home clients,
- e. ten additional ombudsmen employed by the Department of Human Services,
- f. ten additional nursing facility inspectors employed by the State Department of Health,
- g. pharmacy and other Medicaid services to qualified Medicare beneficiaries whose incomes are at or below one hundred percent (100%) of the federal poverty level; provided however, pharmacy benefits authorized for such qualified Medicare beneficiaries shall be suspended if the federal government subsequently extends pharmacy benefits to this population,
- h. funds to conduct a study of nursing facility reimbursement methodology,
- i. costs incurred by the Oklahoma Health Care Authority in the administration of the provisions of this section and any programs created pursuant to this section,
- j. durable medical equipment and supplies services for elderly adults, and
- k. personal needs allowance increases for residents of nursing homes and Intermediate Care Facilities for the

Mentally Retarded (ICFs/MR) from Thirty Dollars (\$30.00) to Fifty Dollars (\$50.00) per month per resident.

4. Expenditures from the fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

5. The fund and the programs specified in this section are exempt from budgetary cuts, reductions, or eliminations caused by the lack of general revenue funds.

6. The Medicaid rate increases for intermediate care facilities for the mentally retarded (ICFs/MR) shall not exceed the net Medicaid rate increase for nursing facilities including, but not limited to, the Medicaid rate increase for which Medicaid-certified nursing facilities are eligible due to the Nursing Facilities Quality of Care Fee less the portion of that increase attributable to treating the Nursing Facilities Quality of Care Fee as an allowable cost.

7. The reimbursement rate for nursing facilities shall be made in accordance with Oklahoma's Medicaid reimbursement rate methodology and the provisions of this section.

8. No nursing facility shall be guaranteed, expressly or otherwise, that any additional costs reimbursed to the facility will equal or exceed the amount of the Nursing Facilities Quality of Care Fee paid by the nursing facility.

H. 1. In the event that federal financial participation pursuant to Title XIX of the Social Security Act is not available to the Oklahoma Medicaid program, for purposes of matching expenditures from the Nursing Facility Quality of Care Fund at the approved federal medical assistance percentage for the applicable fiscal year, the Nursing Facilities Quality of Care Fee shall be null and void as of the date of the nonavailability of such federal funding, through and during any period of nonavailability.

2. In the event of an invalidation of this section by any court of last resort under circumstances not covered in subsection I of this section, the Nursing Facilities Quality of Care Fee shall be null and void as of the effective date of that invalidation.

3. In the event that the Nursing Facilities Quality of Care Fee is determined to be null and void for any of the reasons enumerated in this subsection, any Nursing Facilities Quality of Care Fee assessed and collected for any periods after such invalidation shall be returned in full within sixty (60) days by the Oklahoma Health Care Authority to the nursing facility from which it was collected.

I. 1. If any provision of this section or the application thereof shall be adjudged to be invalid by any court of last resort, such judgment shall not affect, impair or invalidate the provisions of the section, but shall be confined in its operation to the provision thereof directly involved in the controversy in which such judgment was rendered. The applicability of such provision to other persons or circumstances shall not be affected thereby.

2. This subsection shall not apply to any judgment that affects the rate of the Nursing Facilities Quality of Care Fee, its applicability to all licensed nursing homes in the state, the usage of the fee for the purposes prescribed in this section, and/or the ability of the Oklahoma Health Care Authority to obtain full federal participation to match its expenditures of the proceeds of the fee.

J. The Oklahoma Health Care Authority shall promulgate rules for the implementation and enforcement of the Nursing Facilities Quality of Care Fee established by this section.

K. The Authority may assess administrative penalties, and shall promulgate rules which provide for the assessment of administrative penalties, upon nursing facilities which fail to submit the fee required by this section in a timely manner.

L. As used in this section:

1. "Nursing facility" means any home, establishment or institution, or any portion thereof, licensed by the State Department of Health as defined in Section 1-1902 of Title 63 of the Oklahoma Statutes;

2. "Medicaid" means the medical assistance program established in Title XIX of the federal Social Security Act and administered in this state by the Oklahoma Health Care Authority;

3. "Patient gross revenues" means gross revenues received in compensation for services provided to residents of nursing facilities including, but not limited to, client participation. The term "patient gross revenues" shall not include amounts received by nursing facilities as charitable contributions; and

4. "Additional costs paid to Medicaid-certified nursing facilities under Oklahoma's Medicaid reimbursement methodology" means both state and federal Medicaid expenditures including, but not limited to, funds in excess of the aggregate amounts that would otherwise have been paid to Medicaid-certified nursing facilities under the Medicaid reimbursement methodology which have been updated for inflationary, economic, and regulatory trends and which are in effect immediately prior to the inception of the Nursing Facilities Quality of Care Fee.

M. If any provision of this section, or the application thereof, is determined by any controlling federal agency, or any court of last resort to prevent the state from obtaining federal financial participation in the state's Medicaid program, such provision shall be deemed null and void as of the date of the nonavailability of such federal funding and through and during any period of nonavailability. All other provisions of the bill shall remain valid and enforceable.

SECTION 5. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 23rd day of May, 2001.

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Presiding Officer of the House of  
Representatives

Passed the Senate the 16th day of April, 2001.

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Presiding Officer of the Senate